IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE

CRIMINAL APPEAL NO. 191 OF 1990

The State of Maharashtra .. Appellant

versus

Lilabai Baburao Khande .. Respondents

...

Mr.A.M. Shringarpure, APP for the State.

Mr.M.S. Mohite for the respondents.

CORAM : V.M. KANADE, J

DATED : 28th September 2004.

ORAL JUDGEMENT :-

1. The State is challenging the judgement and order passed by 3rd Addl. Sessions Judge, Satara in Sessions Case no.163 of 1988 dated 23rd November 1989. By the said judgement and order, the accused was acquitted of the offences under 498A, 306 of the IPC.

2. The prosecution case is that the deceased was

the daughter in law of the accused and that the accused had treated the deceased with cruelty and had driven her to the point where she had no other alternative but to commit suicide and as a result the deceased committed suicide by jumping into a well on the date of the incident i.e. 29.9.1987. The prosecution case is that the son of the accused Jalinder married the deceased in May 1982. At the time of marriage, dowry of Rs.2,500/- was given along with some silver ornaments. Thereafter, the deceased Suman stayed with her husband Jalinder at Bombay where her husband was serving as a driver in the B.E.S.T. The prosecution case is that the brother of the husband and the accused demanded an amount of Rs.1,000/- from the deceased for the treatment of her husband and during this period, she was ill-treated and was literally starved by providing insufficient food. As a result of the harassment her parents borrowed Rs.1,000/- and the same was given to the accused. On 29.9.1987, the deceased was found dead in the well and accordingly, a case of accidental death was registered. Thereafter, a complaint was lodged by the mother of deceased Suman. Charge-sheet was filed. The accused pleaded not guilty. The trial Court acquitted the accused of the charges levelled against

her. Against the said judgement and order, the State has preferred an appeal in which leave was granted.

3. Perusal of the post mortem notes indicates that the Doctor has opined that the cause of death is due to drowning. In column no.17, he has opined that there was an abrasion over the right Inframammary region of the chest and a contused lacerated wound over both the lips. In the evidence, he has stated that these injuries were possible during the process of jumping in the well and as a result of coming in contact with the rocky rough surface of the well. In the cross-examination, the Doctor has admitted that the injuries described in Column No.17 are possible if the deceased had slipped from the descending slope in the process of taking water from the well and he has stated that the death was due to drowning.

4. PW no.2 Ramchandra Shinde who was a Circle Inspector has stated in the evidence that he had prepared a drawing map of the said place and has stated that the said well was to the west of the village at the distance of two kms. He has stated that the said well has a diameter of 13 meter and there was a plain slope for reaching the bottom of the

well. He has stated that the well was unconstructed and the well surface was having a rocky surface which is ordinarily called as murum in local parlance. He has stated that there are no residential houses near the well. The prosecution further examined PW no.3 Ramdas Nimbalkar who had attended the Inquest Panchnama of the dead body of the deceased Suman. He has also re-iterated that there was no residential house in the area of 2 sq.km. around the well. He has stated that in the Inquest Panchnama, he has noted that there was one basket containing 3 khurpis, one old green lungi chumbal, a bluish towel, one spare chappal, one ear pin was found near the ground. In the cross-examination, he has admitted that there were two political factions in the village and that the police patil belonged to MLA Gudage faction and that the sarpanch belonged to Patil faction. The prosecution thereafter examined PW no.4 Subhedra Kanase, the mother of the deceased Suman who lodged the complaint on the next day i.e. 30.9.1098. PW no.5 Kanta Bhosale was the elder sister of deceased Suman and PW no.6 is one Ramchandra Yadav who has deposed that father of the deceased had taken a loan of Rs.1,000/- from him. PW no.7 Vithal Kanase is the father of the deceased. PW no.8 Natha Kanase is one

of the relatives of deceased Suman. PW no.9 Appasaheb Ganapat Gavade who has been examined as an Investigating Officer in the prosecution. PW nos.5, 6 and 7 have stated that the accused had demanded Rs.1,000/- for providing treatment to the husband of the deceased. He has stated that Suman complained at the time of wedding of her other daughter Mangal which had taken place before 15 days before the incident that the accused had beaten the deceased with a stick on her head. PW no.5 also has stated that the accused used to assault the deceased and used to ill-treat her and make her work in the field. Father of the deceased PW no.7 has stated that the accused had demanded Rs.1,000/- for the treatment of his son-in-law who was a T.B. patient. The prosecution has also brought on record at Exhibit-21 ten letters which were sent by the deceased to her parents. However, in none of these letters, there is any indication about any ill-treatment to the deceased at the hands of the accused. Except the bare words of the complainant, there is no other evidence to indicate that the deceased was ill-treated. The deceased was pregnant by about 5 months. She had gone to the agricultural field along with a basket. From the Inquest Panchnama, it is seen that the saree of

the deceased was tucked in the blouse indicating that she was trying to get down to the well possibly for the purpose of drinking water. None of the articles of the basket indicate that she had carried water with her from her house. There was no residential house in the near vicinity upto nearly 2 sq.km. and it appears that while trying to get down to the well, she might have slipped and as a result had a fall on the rocky surface and suffered one injury of the lips and other on the right chest. There are no injuries on her private parts or any other part of her body. The trial Court therefore, in my view has rightly come to the conclusion that it was a case of accidental death and not a case of suicide. The trial Court has observed that the rainy season was not over and the possibility of the ground being slippery could not be ruled out. The evidence of the panch also clearly indicates that there were two rival factions and the accused and her family belong to one faction and whereas the police patil belong to another faction. The trial Court therefore was of the view that due to the political enmity, advantage was taken by the other faction of the accidental death.

5. I have perused the oral and documentary

evidence on record. From the evidence, it is difficult to believe that the deceased had committed suicide by jumping into the well. On the contrary, there is every possibility that she had tried to get down into the well in order to quench her thirst and had accidentally fell inside the well and had drowned. The view taken by the trial Court and also the findings which are given are based on evidence which is borne out from the record and the findings cannot be said to be perverse. I do not see any reason to interfere with the said order passed by the trial Court.

6. Appeal is therefore dismissed.

V.M. KANADE, J